

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CALLWAVE COMMUNICATIONS, LLC, *

Movant *

v. * CIVIL NO. JKB-16-902

TELECOMMC'NS SYSTEMS, INC., *

Respondent *

*** * * * ***

MEMORANDUM AND ORDER

Pending before the Court is Callwave Communications, LLC's motion to compel Telecommunications Systems, Inc. ("TCS"), to comply with a subpoena issued under Federal Rule of Civil Procedure 45 or, in the alternative, to transfer the motion to the District of Delaware. (ECF No. 1.) The motion has been briefed (ECF Nos. 7 and 10), and no hearing is necessary, Local Rule 105.6 (D. Md. 2014). To the extent the motion seeks transfer to the District of Delaware, it will be granted.

Callwave sued various entities in the District of Delaware for patent infringement. In RGA-12-1704, one of the parties sued is Verizon. Callwave alleges that TCS provided Verizon with computer software or code, which Verizon then employed in infringing applications. The subpoena at issue was issued by Callwave to TCS in 2014, and since then, TCS indicates it has provided over 42,000 pages of documents and has provided two persons for Rule 30(b)(6) depositions; additionally, it has provided Callwave with controlled, supervised access to source code. Callwave agrees that TCS has produced documents but says it is entitled to more. TCS objects to further production on the basis of relevancy.

Under Rule 45(f), the District of Maryland is considered the compliance court and the District of Delaware is considered the issuing court for the subpoena. The rule provides, "When

the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances.”

TCS does not consent to transfer of this motion to the District of Delaware. The undersigned, however, finds exceptional circumstances exist to justify transfer to the issuing court. The 2013 Advisory Committee Note to Rule 45(f) indicates the primary concern of the rule is to avoid burdens on local nonparties subject to subpoenas. Any burden on TCS would flow from a determination that the discovery Callwave seeks is relevant. The Court notes that production under the subpoena would still occur at TCS’s place of business in Annapolis, and that is true regardless of which court rules on the motion. The underlying case is quite complex, and this Court cannot assess the relevancy of Callwave’s discovery demands without wading into a deep sea of already-produced discovery. That determination is uniquely within the ken of the District of Delaware, which is in a far better position to consider the validity *vel non* of TCS’s objections.

Accordingly, to the extent that Callwave’s motion requests transfer of this motion to the District of Delaware, IT IS GRANTED. The Clerk shall take all necessary steps to transfer the case to the District of Delaware for consideration by the presiding judge in Case Number RGA-12-1704 and shall otherwise CLOSE the case.

DATED this 18th day of May, 2016.

BY THE COURT:

_____/s/
James K. Bredar
United States District Judge